PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARMANDO COMPACION Y SURPOSA, ACCUSED-APPELLANT.

G.R. No. 124442. July 20, 2001

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

Armando S. Compacion was charged with violating Section 9 of R.A. No. 6425 (known as the Dangerous Drugs Act of 1972), as amended by R.A. No. 7659, in an information which reads as follows:

> The undersigned accuses ARMANDO COMPACION y Surposa, Barangay Captain of Barangay Bagonbon, San Carlos City, Negros Occidental, of the crime of "VIOLATION OF SECTION 9, REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972 AS AMENDED BY REPUBLIC ACT NO. 7659" committed as follows:
> "That on or about 1:30 o'clock A.M., July 13, 1995, at Barangay Bagonbon, San Carlos City, Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without any authority of law, did, then and there, willfully, unlawfully and criminally plant, cultivate or culture two (2) full grown Indian Hemp Plants, otherwise known as "Marijuana plants", more or less eleven (11) feet tall, in gross violation of Section 9, Republic Act No. 6425, otherwise known as the Dangerous Drugs Act of 1972 as amended by Republic Act No. 7659."
>
> **CONTRARY TO LAW.[1]**

Upon arraignment on August 16, 1995, the accused pleaded not guilty to the crime charged.

Thereafter, trial ensued.

On January 2, 1996, the trial court convicted the accused of the crime charged. The decretal portion of the decision reads as follows:

> WHEREAS, the Court finds the accused ARMANDO COMPACION Y SURPOSA GUILTY BEYOND REASONABLE DOUBT of the crime of "Violation of Section 9, R.A. No. 6425, otherwise known as The Dangerous Drugs Act of 1972, as amended by R.A. No. 7659" whereof he is charged in the information in the instant case and sentences him to reclusion perpetua and to pay a fine of half a million (P500,000.00) Pesos, Philippine Currency. The portion of the backyard of his residence in the poblacion proper of Brgy. Bagonbon this City and Province, in which the two (2) marijuana plants, Exh. "F", subject-matter of this case, were planted, cultivated and cultured, is hereby ordered confiscated and escheated in favor of the State, pursuant to the aforequoted Sec. 13 R.A. 7659.
>
> It would seem that the penalty imposed upon the accused in the instant case for having planted, cultivated and cultured just two (2) marijuana plants is extremely harsh. But there is nothing in the law which allows the Court to impose a lesser penalty in view of the peculiar facts and circumstances in this particular case. Hence, dura lex, sed lex. The law is, indeed, harsh but it is the law.
>
> The obvious message of the law is that people should not have a nonchalant or cavalier attitude towards

> dangerous prohibited drugs. They should not dabble in it as if they were a flippant thing. These dangerous and prohibited drugs are a terrible menace to the minds and morality of our people for their distortive and pervertive effects on them resulting in rampant criminality. That is why the government wants this evil exterminated from our country. It is too bad that the accused instead of helping the government in this drive, in his capacity as barangay captain of his barangay, made a mockery of it by planting, cultivating and culturing said two (2) marijuana plants himself.
>
> A word of counsel and hope for the accused. This is a time of reflection forced upon him by the result of his own act in violating the law. It is time for him to humbly submit to the compassion of God and of his only begotten Son, whose birth on earth to become the Saviour of all sinners, we have just celebrated, to change and transform his own life by his coming to Him for the purpose, so that with a changed life, God might be gracious enough to move the heart of His Excellency, the President, of this Country, to pardon and let him walk out of prison a freeman. It would be good for him to read God's Word daily while in prison for his guidance, comfort and hope.
>
> Accused convicted of the crime whereof he is charged in the information in the instant case.
>
> SO ORDERED.[2]

The accused now appeals from the above judgment of conviction and asks the Court to reverse the same on the following grounds, viz:

The lower court erred:

> - In holding that Exhibit "F" of the prosecution, consisting of two marijuana plants wrapped in plastic, is admissible in evidence against the accused as the corpus delicti in the instant case, inspite of the fact that the prosecution failed to prove that the specimens of marijuana (Exhibit "F") examined by the forensic chemist were the ones purportedly planted and cultivated by the accused, and of the fact that the prosecution failed to establish the evidence's chain of custody; and
>
> - In holding that the warrantless search of the residence of the accused at 1:30 o'clock in the morning of July 13, 1995 at Barangay Bagonbon, San Carlos City, Negros Occidental, and seizure of two eleven feet tall, more or less, full grown suspected Indian Hemp, otherwise known as Marijuana plants, leading to the subsequent arrest of the accused, were valid on the ground that the accused has committed the crime of cultivating the said marijuana plants in violation of Sec. 9, RA 6425 (Dangerous Drugs Act of 1972), as amended by RA 7659 in open view, inspite of the fact that they had to enter the dwelling of the accused to get to the place where the suspected marijuana plants were planted, and in admitting in evidence the said plants, later marked as Exhibit "F", against the accused, inspite of the fact that the said plants were the fruits of the poisonous tree.[3]

The relevant facts are as follows:

Acting on a confidential tip supplied by a police informant that accused-appellant was growing and cultivating marijuana plants, SPO1 Gilbert L. Linda and SPO2 Basilio Sarong of the 6th Narcotic Regional Field Unit of the Narcotics Command (NARCOM) of the Bacolod City Detachment conducted a surveillance of the residence of accused-appellant who was then the barangay captain of barangay Bagonbon, San Carlos City, Negros Occidental on July 9, 1995. During the said surveillance, they saw two (2) tall plants in the backyard of the accused-appellant which they suspected to be marijuana plants.[4]

SPO1 Linda and SPO2 Sarong reported the result of their surveillance to SPO4 Ranulfo T. Villamor, Jr., Chief of NARCOM, Bacolod City, who immediately formed a team composed of the members of the Intelligence Division Provincial Command, the Criminal Investigation Command and the Special Action Force. Two members of the media, one from DYWF Radio and another from DYRL Radio, were also included in the composite team.

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On July 12, 1995, the team applied for a search warrant with the office of Executive Judge Bernardo Ponferrada in Bacolod City. However, Judge Ponferrada informed them that he did not have territorial jurisdiction over the matter.[5] The team then left Bacolod City for San Carlos City. They arrived there around six-thirty in the evening, then went to the house of Executive Judge Roberto S. Javellana to secure a search warrant. They were not able to do so because it was nighttime and office hours were obviously over. They were told by the judge to go back in the morning.[6]

Nonetheless, the team proceeded to barangay Bagonbon and arrived at the residence of accused-appellant in the early morning of July 13, 1995. SPO4 Villamor knocked at the gate and called out for the accused-appellant. What happened thereafter is subject to conflicting accounts. The prosecution contends that the accused-appellant opened the gate and permitted them to come in. He was immediately asked by SPO4 Villamor about the suspected marijuana plants and he admitted that he planted and cultivated the same for the use of his wife who was suffering from migraine. SPO4 Villamor then told him that he would be charged for violation of Section 9 of R.A. No. 6425 and informed him of his constitutional rights. The operatives then uprooted the suspected marijuana plants. SPO1 Linda conducted an initial field test of the plants by using the Narcotics Drug Identification Kit. The test yielded a positive result.[7]

On July 15, 1995, the plants were turned over to the Philippine National Police (PNP) Crime Laboratory, Bacolod City Police Command, particularly to Senior Inspector Reah Abastillas Villavicencio. Senior Inspector Villavicencio weighed and measured the plants, one was 125 inches and weighed 700 grams while the other was 130 inches and weighed 900 grams. Three (3) qualitative examinations were conducted, namely: the microscopic test, the chemical test, and the thin layer chromatographic test. All yielded positive results.[8]

On his part, accused-appellant maintains that around one-thirty in the early morning of July 13, 1995 while he and his family were sleeping, he heard somebody knocking outside his house. He went down bringing with him a flashlight. After he opened the gate, four (4) persons who he thought were members of the military, entered the premises then went inside the house. It was dark so he could not count the others who entered the house as the same was lit only by a kerosene lamp. One of the four men told him to sit in the living room. Some of the men went upstairs while the others went around the house. None of them asked for his permission to search his house and the premises.[9]

After about twenty (20) minutes of searching, the men called him outside and brought him to the backyard. One of the military men said: "Captain, you have a (sic) marijuana here at your backyard" to which accused-appellant replied: "I do not know that they were (sic) marijuana plants but what I know is that they are medicinal plants for my wife" who was suffering from migraine.[10]

After he was informed that the plants in his backyard were marijuana, the men took pictures of him and themselves. Thereafter, he was brought inside the house where he and the military men spent the night.[11]

At around ten o'clock that same morning, they brought him with them to the city hall. Accused-appellant saw that one of the two (2) service vehicles they brought was fully loaded with plants. He was later told by the military men that said plants were marijuana.[12] Upon arrival at the city hall, the men met with the mayor and then unloaded the alleged marijuana plants. A picture of him together with the arresting team was taken with the alleged marijuana as back drop. Soon thereafter, he was taken to Hda. Socorro at the SAF Headquarters.[13]

A criminal complaint for violation of Section 9 of R.A. No. 6425, as amended by R.A. No. 7659 was filed against accused-appellant.

Turning to the legal defenses of accused-appellant, we now consider his allegation that his constitutional right

against unreasonable searches and seizures had been violated by the police authorities.

The relevant constitutional provisions are found in Sections 2 and 3 [2], Article III of the 1987 Constitution which read as follows:

> Sec. 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.
>
> Sec. 3. xxx
>
> (2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.

Said constitutional provisions are safeguards against reckless, malicious and unreasonable invasion of privacy and liberty. The Court, in Villanueva v. Querubin,[14] underscored their importance:

> It is deference to one's personality that lies at the core of this right, but it could be also looked upon as a recognition of a constitutionally protected area, primarily one's home, but not necessarily thereto confined. What is sought to be guarded is a man's prerogative to choose who is allowed entry to his residence. In that haven of refuge, his individuality can assert itself not only in the choice of who shall be welcome but likewise in the kind of objects he wants around him. There the state, however powerful, does not as such have access except under the circumstances above noted, for in the traditional formulation, his house, however humble, is his castle. Thus is outlawed any unwarranted intrusion by government, which is called upon to refrain from any invasion of his dwelling and to respect the privacies of his life. In the same vein, Landynski in his authoritative work could fitly characterize this constitutional right as the embodiment of "a spiritual concept: the belief that to value the privacy of home and person and to afford its constitutional protection against the long reach of government is no less than to value human dignity, and that his privacy must not be disturbed except in case of overriding social need, and then only under stringent procedural safeguards."[15]

A search and seizure, therefore, must be carried out through or with a judicial warrant; otherwise, such search and seizure becomes "unreasonable" within the meaning of the constitutional provision.[16] Evidence secured thereby, i.e., the "fruits" of the search and seizure, will be inadmissible in evidence for any purpose in any proceeding."[17]

The requirement that a warrant must be obtained from the proper judicial authority prior to the conduct of a search and seizure is, however, not absolute. There are several instances when the law recognizes exceptions, such as when the owner of the premises consents or voluntarily submits to a search;[18] when the owner of the premises waives his right against such incursion;[19] when the search is incidental to a lawful arrest;[20] when it is made on vessels and aircraft for violation of customs laws;[21] when it is made on automobiles for the purpose of preventing violations of smuggling or immigration laws;[22] when it involves prohibited articles in plain view;[23] when it involves a "stop and frisk" situation;[24] when the search is under exigent and emergency circumstances;[25] or in cases of inspection of buildings and other premises for the enforcement of fire, sanitary and building regulations.[26] In these instances, a search may be validly made even without a warrant.

In the instant case, the search and seizure conducted by the composite team in the house of accused-appellant was not authorized by a search warrant. It does not appear either that the situation falls under any of the above mentioned cases. Consequently, accused-appellant's right against unreasonable search and seizure was clearly violated.

It is extant from the records that accused-appellant did not consent to the warrantless search and seizure conducted. While the right to be secure from unreasonable search and seizure may, like every right, be waived either expressly or impliedly,[27] such waiver must constitute a valid waiver made voluntarily, knowingly and intelligently. The act of the accused-appellant in allowing the members of the military to enter his premises and his consequent silence during the unreasonable search and seizure could not be construed as voluntary submission or an implied acquiescence to warrantless search and seizure especially so when members of the raiding team were intimidatingly numerous and heavily armed. His implied acquiescence, if any, could not have been more than mere passive conformity given under coercive or intimidating circumstances and is, thus, considered no consent at all within the purview of the constitutional guarantee. Consequently, herein accused-appellant's lack of objection to the search and seizure is not tantamount to a waiver of his constitutional right or a voluntary submission to the warrantless search and seizure.[28] The case of People v. Burgos,[29] is instructive. In Burgos, the Court ruled that the accused is not to be presumed to have waived the unlawful search "simply because he failed to object." There, we held:

> xxx To constitute a waiver, it must appear first that the right exists; secondly, that the person involved had knowledge, actual or constructive, of the existence of such a right; and lastly, that said person had an actual intention to relinquish the right (Pasion Vda. De Garcia v. Locsin, 65 Phil. 689). The fact that the accused failed to object to the entry into his house does not amount to a permission to make a search therein (Magoncia v. Palacio, 80 Phil. 770). As pointed out by Justice Laurel in the case of Pasion Vda. De Garcia v. Locsin (supra);
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> xxx xxx xxx
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> x x x As the constitutional guaranty is not dependent upon any affirmative act of the citizen, the courts do not place the citizen in the position of either contesting an officer's authority by force, or waiving his constitutional rights; but instead they hold that a peaceful submission to a search or seizure is not a consent or an invitation thereto, but is merely a demonstration of regard for the supremacy of the law.
>
> We apply the rule that: "courts indulge every reasonable presumption against waiver of fundamental constitutional rights and that we do not presume acquiescence in the loss of fundamental rights."[30]

Neither could the members of the composite team have justified their search of accused-appellant's premises by invoking the necessity and urgency of the situation. It was admitted by the members of the arresting team that the residence of accused-appellant had already been put under surveillance following a tip from a confidential informant. The surveillance was conducted on July 9, 1995 while the alleged marijuana plants were seized four (4) days later or on July 13, 1995. Surely, the raiding team had all the opportunity to have first secured a search warrant before forcing their way into accused-appellant's premises. In fact, they earlier had approached then Executive Judge Ponferrada of Bacolod City who declined to issue one on the ground that the matter was outside his territorial jurisdiction. Then, they went to Executive Judge Javellana of San Carlos City in the evening of July 12, 1995 who asked them to come back in the morning as it was already nighttime and outside of office hours. However, in their haste to apprehend the accused-appellant on the pretext that information of his impending arrest may be leaked to him, the team proceeded to go to his residence to arrest him and seize the alleged marijuana plants. The team's apprehension of a tip-off was unfounded. It is far-fetched that one could have gone to accused-appellant's place before the following morning to warn him of his impending arrest as barangay Bagonbon is an isolated and difficult to reach mountain barangay. The road leading to it was rough, hilly and eroded by rain and flood.[31] A few hours delay to await the issuance of a warrant in the morning would not have compromised the team's operation.

In justifying the validity of the warrantless arrest, search and seizure on July 13, 1995, the trial court ruled that the

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accused-appellant was caught "in flagrante delicto of having planted, grown and cultivated the marijuana plants" which was "easily visible from outside of the residence of the accused."[32] Thus, the trial court concluded that:

> xxx (T)he said two (2) marijuana plants, Exh. "F", were the very corpus delicti of the crime the accused has been committing since the time he planted them in the backyard of his residence for whatever reason - a corpus delicti which the NARCOM agents saw with their very own eyes as the same were in plain view when they made a surveillance in the accused's place on July 9, 1995. Said corpus delicti has remained on the spots in accused's backyard where they had been growing since the time they were planted there and, therefore, any peace officer or even private citizen, for that matter, who has seen said plants and recognized them as marijuana, was by law empowered and authorized to arrest the accused even without any warrant of arrest.
> The accused was caught in flagrante delicto for he was carrying marijuana, hence, committing a crime, at the time of his arrest. The warrantless search which was conducted following a lawful arrest, was valid.
>
> - People vs. Bandin (Dec. 10, 1993)
> 226 SCRA 299, at p. 300

The accused was caught in flagrante delicto growing, cultivating and culturing said two (2) marijuana plants, Exh. "F", in the backyard of his residence, which the NARCOM agents uprooted from there at the time they arrested and apprehended him. Under said circumstances, a search warrant and/or warrant of arrest were not legally needed before the NARCOM agents could effect the arrest of the accused.[33]

As a general rule, objects in the "plain view" of an officer who has the right to be in the position to have that view are subject to seizure without a warrant.[34] It is usually applied where a police officer is not searching for evidence against the accused, but nonetheless inadvertently comes across an incriminating object.[35] Thus, the following elements must be present before the doctrine may be applied: (a) a prior valid intention based on the valid warrantless arrest in which the police are legally present in the pursuit of their official duties; (b) the evidence was inadvertently discovered by the police who have the right to be where they are; (c) the evidence must be immediately apparent; and (d) "plain view" justified were seizure of evidence without further search.[36]

Here, there was no valid warrantless arrest. They forced their way into accused-appellant's premises without the latter's consent. It is undisputed that the NARCOM agents conducted a surveillance of the residence of accused-appellant on July 9, 1995 on the suspicion that he was growing and cultivating marijuana when they allegedly came in "plain view" of the marijuana plants. When the agents entered his premises on July 13, 1995, their intention was to seize the evidence against him. In fact, they initially wanted to secure a search warrant but could not simply wait for one to be issued. The NARCOM agents, therefore, did not come across the marijuana plants inadvertently when they conducted a surveillance and barged into accused-appellant's residence.

In People v. Musa,[37] the Court held:

> The "plain view" doctrine may not, however, be used to launch unbridled searches and indiscriminate seizures nor to extend a general exploratory search made solely to find evidence of defendant's guilt. The "plain view" doctrine is usually applied where a police officer is not searching for evidence against the accused, but nonetheless inadvertently comes across an incriminating object. [Coolidge v. New Hampshire, 403 U.S. 443, 29 L.Ed. 2d 564 (1971)] Furthermore, the U.S. Supreme Court stated the following limitations on the application of the doctrine:
> What the "plain view" cases have in common is that the police officer in each of them had a prior justification for an intrusion in the course of which he came inadvertently across a piece of evidence incriminating the accused. The doctrine serves to supplement the prior justification - whether it be a warrant for another object, hot pursuit, search incident to lawful arrest, or some other legitimate reason for being present unconnected with a search directed against the accused - and permits the warrantless seizure. Of course, the extension of the original justification is legitimate only where it is immediately apparent to the police that they have evidence

> before them; the "plain view" doctrine may not be used to extend a general exploratory search from one object to another until something incriminating at last emerges. [Id., 29 L.Ed. 2d 583. See also Texas v. Brown, 460 U.G. 730, 75 L. Ed. 2d 502 (1983)]

It was not even apparent to the members of the composite team whether the plants involved herein were indeed marijuana plants. After said plants were uprooted, SPO1 Linda had to conduct a field test on said plants by using a Narcotics Drug Identification Kit to determine if the same were indeed marijuana plants.[38] Later, Senior Inspector Villavicencio, a forensic chemist, had to conduct three (3) qualitative examinations to determine if the plants were indeed marijuana.[39]

Since the evidence was secured on the occasion of an unreasonable search and seizure, the same is tainted and illegal and should therefore be excluded for being the proverbial fruit of a poisonous tree.[40] In People v. Aruta,[41] we held that:

> The exclusion of such evidence is the only practical means of enforcing the constitutional injunction against unreasonable searches and seizure. The non-exclusionary rule is contrary to the letter and spirit of the prohibition against unreasonable searches and seizures.
>
> While conceding that the officer making the unlawful search and seizure may be held criminally and civilly liable, the Stonehill case observed that most jurisdictions have realized that the exclusionary rule is "he only practical means of enforcing the constitutional injunction" against abuse. This approach is based on the justification made by Judge Learned Hand that "only in case the prosecution which itself controls the seizing officials, knows that it cannot profit by their wrong, will the wrong be repressed."
>
> Unreasonable searches and seizures are the menace against which the constitutional guarantees afford full protection. While the power to search and seize may at times be necessary to the public welfare, still it may be exercised and the law enforced without transgressing the constitutional rights of the citizens, for the enforcement of no statute is of sufficient importance to justify indifference to the basic principles of government.
>
> Those who are supposed to enforce the law are not justified in disregarding the rights of the individual in the name of order. Order is too high a price to pay for the loss of liberty. As Justice Holmes declared: "I think it is less evil that some criminals escape than that the government should play an ignoble part." It is simply not allowed in free society to violate a law to enforce another, especially if the law violated is the Constitution itself.[42]

WHEREFORE, the decision of the Regional Trial Court of San Carlos City, Branch 58 is hereby REVERSED and SET ASIDE. Accused-appellant Armando S. Compacion is hereby ACQUITTED of the crime charged on ground of reasonable doubt. He is ordered released from confinement unless he is being held for some other legal grounds. The subject marijuana is ordered disposed of in accordance with law.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Pardo, and Ynares-Santiago, JJ., concur.

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[1] Records, p. 1.

[2] Id., at 147-148.

[3] Rollo, pp. 117-118.

[4] TSN, September 7, 1995, pp. 4-5.

[5] Id., at 5-9.

[6] Id., at 9.

[7] Id., at 11-19.

[8] Id., at 18; TSN, September 14, 1995, pp. 6-13.

[9] TSN, October 25, 1995, pp. 8-10.

[10] Id., at 11-12.

[11] Id., at 14.

[12] Id., at 15.

[13] Id., at 16.

[14] 48 SCRA 345 (1972).

[15] Id., at 350.

[16] People v. Rodrigueza, 205 SCRA 791, 798 (1992).

[17] People v. Aminnudin, 163 SCRA 402 (1988).

[18] People v. Malasugui, 63 Phil 221 (1936).

[19] Bagcal v. Villaraza, 120 SCRA 525 (1983).

[20] Adams v. Williams, 407 U.S. 143 (1972).

[21] Roldan v. Arca, 65 SCRA 336 (1975).

[22] Caroll v. U.S., 267 U.S. 132 (1925).

[23] Harris v. U.S., 390 U.S. 234 (1968)

[24] People v. Salayao, 262 SCRA 255 (1996).

[25] People v. De Gracia, 233 SCRA 716 (1994).

[26] Camara v. Municipal Court, 387 U.S. 523 (1967).

[27] People v. Malasugui, supra; People v. Donato, 198 SCRA 130 (1991); People v. Rodrigueza, supra; People v. Aruta, 288 SCRA 626 (1998).

[28] People v. Aruta, supra; Aniag v. Commission on Elections, 237 SCRA 424 (1994).

[29] 144 SCRA 1 (1986).

[30] Id., at 16; Also cited in People v. Aruta, supra and People v. Barros, 231 SCRA 557 (1994).

[31] TSN, November 9, 1995, p. 22.

[32] Decision, p. 26, Rollo, p. 76.

[33] Rollo, pp. 80-81.

[34] Harris v. U.S., supra.

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[35] Collidge v. New Hampshire, 403 U.S. 443, 29 L. Ed. 2d 564 (1971).

[36] People v. Bolasa, 321 SCRA 459 (1999); People v. Doria, 301 SCRA 668 (1999); Padilla v. Court of Appeals, 269 SCRA 402 (1997).

[37] 217 SCRA 597, 611 (1993).

[38] See Note 7.

[39] TSN, September 14, 1995, pp. 6-13, 22.

[40] People v. Montilla, 285 SCRA 703 (1998).

[41] Supra.

[42] Id., at 652-653.

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